

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

----- x
LINCOLN E. SMITH,

Plaintiff,

vs.

Civil Action
No. 03-10062-DPWCITY OF BOSTON/BOSTON INSPECTIONAL
SERVICES, AND KEVIN JOYCE,Defendants.
----- x

DEPOSITION OF KEVIN J. JOYCE, taken pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before Deborah S. Gutierrez, a Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public in and for the Commonwealth of Massachusetts, at the Boston City Hall, One City Hall Plaza, Boston, Massachusetts, on Tuesday, February 17, 2004, commencing at 10:55 a.m.

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WITNESS

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1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

3 MARK STOPA, ESQUIRE
4 Grady & Stopa
5 36 Mechanic Street
6 Foxboro, Massachusetts 02035
(508) 543-0600

7 ON BEHALF OF THE DEFENDANTS:

8 JAMES M. CHERNETSKY, ESQUIRE
9 KENNETH J. FORTON, ESQUIRE
10 City of Boston
11 Boston City Hall, Room 615
12 Boston, Massachusetts 02201
13 (617) 635-4048

14 Also Present:

15 Lincoln Smith

1 PROCEEDINGS

2 * * * * *

3 Kevin J. Joyce,

4 having been first duly sworn, testified as follows:

5 MR. STOPA: Usual stipulations?

6 MR. CHERNETSKY: Yeah. Why don't we
7 say what they are.8 MR. STOPA: Okay. All objections
9 reserved except as to form, and waive notary, read
10 and sign.

11 MR. CHERNETSKY: Thirty days?

12 MR. STOPA: Fine.

13 MR. CHERNETSKY: Okay. And we're
14 also reserving motions to strike?

15 MR. STOPA: Yes.

16 MR. CHERNETSKY: Okay.

17 MR. STOPA: All motions other than as
18 to form.

19 EXAMINATION BY MR. STOPA:

20 Q. May I have your full name, sir.

21 A. Kevin J. Joyce.

22 Q. What's your address?

23 A. 1010 Massachusetts Avenue, Boston, 02118.

24 Q. And would you share for me -- share with me your

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1 educational background.
 2 A. Um.... St. Gregory's Grammar School in --
 3 Q. How about we start with college and --
 4 A. -- Stonehill College, New England School of Law.
 5 Q. When did you graduate from Stonehill College?
 6 A. '78.
 7 Q. And New England school of Law is when?
 8 A. '82.
 9 Q. And what is your current employ?
 10 A. My employer?
 11 Q. Employ. Yes. How are you employed?
 12 A. City of Boston.
 13 Q. What's your position?
 14 A. Commissioner of the Inspectional Services
 15 Department.
 16 Q. And how long have you held that position?
 17 A. Since September of '98.
 18 Q. How many people work in the inspectional services
 19 department?
 20 A. Approximately 240.
 21 Q. And you manage all of them?
 22 A. I do.
 23 Q. Okay. And what is the inspectional services
 24 department charged with doing?

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1 A. Inspectional services department is charged with
 2 administering various public safety regulations in
 3 the City of Boston such as the state sanitary code,
 4 state building code, electrical code, different
 5 codes --
 6 Q. Okay.
 7 A. -- like that.
 8 Q. And you enforce these codes as relates to
 9 residential property owners?
 10 A. Sure.
 11 Q. Business property owners?
 12 A. Sure.
 13 Q. All right. Approximately how many different
 14 buildings fall -- well, strike that.
 15 Literally every building in the City
 16 of Boston, then, falls under the scope of the work
 17 of the inspectional services department, correct?
 18 A. Conceivably, sure.
 19 Q. Is there any one area -- strike that.
 20 The focus of your work, does that have
 21 -- does your work have any primary focus, or do you
 22 just generally cover every building in the City?
 23 A. Well, my focus is to manage the department. I'm
 24 the overall manager.

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1 Q. But when I say your focus I'm talking about
 2 inspectional services. When I ask you a question
 3 of you personally, I'll direct it that way.
 4 A. Okay.
 5 Q. So your department, then, obviously oversees the
 6 application of the codes over all buildings.
 7 A. Correct.
 8 Q. Do you find that residential dwellings are of a
 9 larger concern versus commercial dwellings? Or is
 10 that an incorrect understanding on my part?
 11 A. It's incorrect. I don't see any distinction.
 12 Q. So a building is a building and you enforce the
 13 codes as to all of them?
 14 A. Right.
 15 Q. Okay. And prior to your taking on the position of
 16 commissioner of the inspectional services
 17 department, did you have any prior experience in
 18 regards to commercial property or residential
 19 property management or oversight?
 20 A. My family owned residential property when I was a
 21 kid. I had some responsibilities there.
 22 Q. Okay. Had you had any experience with the various
 23 codes that you are now charged with enforcing?
 24 A. As a lawyer.

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1 Q. As a lawyer?
 2 A. Yes.
 3 Q. Where was that?
 4 A. I worked in the city law department.
 5 Q. How long did you work in the city law department?
 6 A. I suppose I worked here from 1991 to 1998. Before
 7 that I was in private practice. I did some
 8 permitting work and zoning work while I was in
 9 private practice.
 10 Q. Okay. Where were you in private practice?
 11 A. Regina Quinlan and Dan O'Connell at 6 Beacon
 12 Street.
 13 Q. And were you in private practice from the time you
 14 graduated from law school until the time you went
 15 to work for the city law department?
 16 A. Yes, except I went to inspectional services before
 17 I came to the city law department. And I think I
 18 was in inspectional services for a year, year and a
 19 half before I came here.
 20 Q. And what did you do with inspectional services
 21 during that tenure?
 22 A. I was what they call -- I was a special assistant
 23 corporation counsel. I did the labor relations for
 24 the department. I ran the -- I oversaw the plants

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1 examination unit in the building division.
 2 Q. Okay. Now, what does the structure of inspectional
 3 services department look like, corporate structure?
 4 Obviously, you're up at the top.
 5 A. Commissioner. There's three basic divisions;
 6 administration and finance, buildings and
 7 structures, and field services.
 8 Q. And do you have a manager for each one of those
 9 divisions?
 10 A. I do.
 11 Q. What sort of a job label do they carry?
 12 A. Deputy commissioner.
 13 Q. And who's your deputy commissioner for
 14 administration and finance?
 15 A. Dick Kanaskie.
 16 Q. Can you spell that last name, please.
 17 A. K-a-n-a-s-k-i-e.
 18 Q. And, I'm sorry, what was the second one you named?
 19 A. Buildings and structures.
 20 Q. Thank you. I couldn't read my own writing.
 21 A. And that's under Gary Moccia.
 22 Q. How do you spell his last name?
 23 A. M-o-c-c-i-a. And he's technically the inspector,
 24 what they call the inspector of buildings.

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1 Q. But does he also carry the moniker of deputy
 2 commissioner?
 3 A. I think he's an assistant commissioner.
 4 Q. And the last one was field services, and who heads
 5 that up?
 6 A. Frank Frattaroli.
 7 Q. How do you spell Frank's last name?
 8 A. F-r-a-t-t-a-r-o-l-i. And he's a deputy
 9 commissioner.
 10 Q. You don't hire people with simple last names, I
 11 take it.
 12 A. Well, they were there before I came.
 13 Q. Actually, that was my next question; did you hire
 14 any of those people.
 15 So they were all there when you took
 16 the position?
 17 A. Yup.
 18 Q. Okay. So somebody else's fault.
 19 And how many people fall under the
 20 administration and finance division, other
 21 employees besides the deputy commissioner? And if
 22 it's an approximation that's fine, too. It's
 23 obviously not critical information.
 24 A. Say 50.

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1 Q. And how about building and structures?
 2 A. Seventy-five.
 3 Q. And field services?
 4 A. That's the bulk of it. About two -- 150 maybe,
 5 something like that.
 6 Q. Okay.
 7 A. These numbers --
 8 Q. I'll accept them as being vague and approximate.
 9 A. Yeah. I mean, you know.
 10 Q. As I suggested, these are not critical issues, so
 11 I'm not concerned about it. I just want to have an
 12 idea.
 13 Now, buildings and structures, what
 14 does that department do?
 15 A. That administers the City of Boston -- primarily
 16 administers the City of Boston zoning code and the
 17 state building code in Boston.
 18 Q. I take it administration and finance is what it
 19 sounds like it is.
 20 A. Right. It's, you know, all the money, the
 21 business of the operation. Corporate -- that would
 22 be -- in the private sector that would be corporate
 23 business.
 24 Q. How large is the budget for inspectional services?

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1 A. About 13.4 million.
 2 Q. Never enough, though.
 3 A. Never enough.
 4 Q. Okay. Let's go over to field services. Obviously,
 5 the largest of the three departments.
 6 A. Mm-hmm.
 7 Q. What is their main charge? What do they do?
 8 A. They do the state sanitary code, the federal food
 9 code, some state environmental and city
 10 environmental codes and regulations.
 11 MR. CHERNETSKY: Excuse me, Mark.
 12 MR. STOPA: Sure. Let's go off for a
 13 second.
 14 (Brief interruption in the proceedings
 15 to answer the phone.)
 16 (Whereupon, Lincoln Smith entered the
 17 proceedings.)
 18 MR. STOPA: Okay. Let's go back.
 19 MR. CHERNETSKY: I'm sorry, Mark.
 20 Can we just hear the question and answer again
 21 because the phone started ringing in the middle of
 22 it.
 23 (The record was read back.)
 24 Q. Okay. That was about it for field services?

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1 A. Yeah.
 2 Q. Yes?
 3 A. Yes.
 4 Q. Okay. And below Frank, I'm not going to try to
 5 pronounce his last name, how does that department
 6 break down?
 7 A. Health division, housing division, environmental
 8 services division, and weights and measures.
 9 Q. Are those 150 employees evenly broken up into those
 10 separate aspects, or is there a weighting towards
 11 one or the other?
 12 A. It goes by the way the positions fall. I'd say
 13 generally, generally they're all just about the
 14 same.
 15 Q. Okay. Now, if someone calls in a complaint that
 16 there's no heat in a house or in a building, what
 17 division handles that problem?
 18 A. Generally, it would be the housing division, could
 19 be building. Depends where it's assigned.
 20 Q. So different situations might be assigned to
 21 different --
 22 A. Yes.
 23 Q. Let me finish, please. Different structures,
 24 buildings and structures, versus field services?

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1 A. Could be.
 2 Q. What would make the distinction as to whether it
 3 went to one or the other? What would make that
 4 decision?
 5 A. Public safety, whatever technical issues arise.
 6 The inspectors determine where they send these
 7 things when they come in.
 8 Q. Okay.
 9 A. But generally no heat would go to housing and
 10 residential permits.
 11 Q. Where's that?
 12 A. That's in Frank Frattaroli's, field services.
 13 Q. I guess that's where I was going.
 14 Of the 150 or so people that are in
 15 the field services division, how many of those
 16 people are inspectors?
 17 A. I would say 120.
 18 Q. And the balance would be what?
 19 A. Managers and administrative staff.
 20 Q. Now, let's talk about your office for a second. I
 21 don't mean physically your office but your
 22 figurative office.
 23 Other than yourself, what other kind
 24 of staff do you have there?

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1 A. I have an administrative assistant.
 2 Q. Who is that?
 3 A. Missy DeRosa.
 4 Q. And how do spell Missy's last name?
 5 A. D-e-R-o-s-a.
 6 Q. And who else is there?
 7 A. Then there's the chief of staff.
 8 Q. Who's that?
 9 A. Carol McDermott.
 10 Q. Cal?
 11 A. Carol.
 12 Q. Carol?
 13 A. Yeah. She's a woman. C-a-r-o-l.
 14 Q. Sorry. And who else is there?
 15 A. Then under Carol McDermott there's a policy
 16 director.
 17 Q. Who's that?
 18 A. John Dorsey.
 19 Q. Okay. Go ahead.
 20 A. And then there's a spokesperson who is Lisa
 21 Timberlake.
 22 Q. Now, as most of what we're doing here in regards to
 23 Mr. Smith's litigation relates to December of 2000,
 24 were any of those people on your administrative

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1 staff there at that time? Were they holding
 2 positions at that time?
 3 A. Yes. Carol Mc -- yeah, all three of them. Well,
 4 Missy DeRosa, I can't remember about when Missy
 5 DeRosa came. I know that Lisa Timberlake was
 6 there, and I know that John Dorsey was there.
 7 Carol McDermott may or may not have been. I'm not
 8 sure.
 9 Q. Okay. And was John Dorsey holding that same
 10 position back then, policy director?
 11 A. I don't know. I can't remember.
 12 Q. What does a policy director do?
 13 A. Coordinates policy for the department.
 14 Q. Can you explain that further? I don't understand
 15 what that means.
 16 A. Drafts policies, drafts -- drafts rules and
 17 regulations, collaborates with the division
 18 managers on what -- what policies need to be
 19 implemented in the department.
 20 Q. Okay. And -- I'm sorry.
 21 A. And he also handles any press inquiries, meeting
 22 inquiries, anything like that --
 23 Q. Okay.
 24 A. -- that's handled.

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1 Q. And how about the chief of staff, Carol McDermott,
2 what does that position do?

3 A. Generally oversees the management of the
4 department, coordinates with the division, the
5 deputy commissioners and the division managers,
6 supervises the policy office, does some training,
7 some human resources stuff, things of that nature.

8 Q. Okay. And Missy DeRosa, an administrative person,
9 was that administrative aid or admin --

10 A. She's -- I think she's a 17 clerk. She helps me
11 manage my correspondence, answers my phone, does my
12 filing, does things that I -- you know, they call
13 them clerks but they're, you know, I like to refer
14 to them as administrators.

15 Q. Fair enough. And spokesperson Lisa Timberlake you
16 said.

17 A. Mm-hmm.

18 Q. What is -- the spokesperson essentially is --

19 A. Answers question from the media about issues that
20 come up.

21 Q. Okay. Did you have a Julie Fothergill on your
22 administrative staff back then?

23 A. I did.

24 Q. What was her position?

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1 A. I don't remember. In the year 2000 I don't know.
2 She had various assignments. I think she oversaw
3 the policy office in 2000.

4 Q. Did she then after that time hold a different
5 position?

6 A. For a while.

7 Q. What was that?

8 A. She was the manager of the legal division.

9 Q. Where does the legal division fall?

10 A. Doesn't really exist anymore as the legal division.
11 It's sort of been incorporated into something new,
12 something different.

13 Q. What's it now incorporated into?

14 A. I think it's called investigations and regulatory
15 affairs.

16 Q. Is that part of your inspectional services
17 department?

18 A. It goes under buildings and structures is where
19 it's located presently.

20 Q. Okay. Why was there a change with that
21 subclassification?

22 A. Because the corporation counsel's office does the
23 city's law work and the departments basically do
24 their -- they administer the codes up to the point

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1 that it requires a lawyer, and then the city law
2 department takes the cases from there.

3 Q. Okay. Now, your department, are your procedures
4 for how you handle complaints concerning -- we'll
5 just stick with a no heat call on a rental
6 property. Okay? Are your procedures different
7 today than they were in or about the time period of
8 December 2000?

9 A. I wouldn't say they're different.

10 Q. Okay. The reason I'm asking is I'm going to ask
11 you what the procedures are when a call comes in
12 and so forth, and I just need to know whether
13 there's some distinction or difference between the
14 way things were handled in December 2000 versus
15 2003, 2004.

16 A. There's more formality to it. There's more
17 published guidance from the department and the
18 inspectors on the process of performing inspections
19 and work rules and standards and uniform
20 inspections.

21 Q. Okay.

22 A. So, you know, that's not really different, it's
23 more formal.

24 Q. That's fine. And I appreciate that distinction

Page 20

1 because I think that might be helpful as we
2 proceed. So I'm going to ask my questions, then,
3 based upon the time period surrounding December
4 2000, which is, again, our focus on this
5 litigation.

6 If a call for no heat in a residential
7 rental property came in to your office, what would
8 next happen with that complaint?

9 A. As I -- you know, I'm not a -- I have a general
10 overview of the process. I don't have --

11 Q. Okay.

12 A. I'm not -- you know, I'm not a technical person.
13 I'm not answering these complaints on a daily
14 basis. My general impression is that a call comes
15 in, someone makes a complaint, an inspector's
16 dispatched, and then, you know, takes a course from
17 there.

18 Q. Okay. And when an inspector is dispatched to the
19 property, what are they supposed to do?

20 A. Respond to the complaint.

21 Q. To see if there is no heat?

22 A. Are we talking a no heat complaint?

23 Q. Yeah, that's what -- I think I qualified it by
24 saying --

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1 A. They assess and see if -- you know, find out the
2 facts.
3 Q. Okay. And the -- let's say the inspector gets
4 dispatched, they arrive at whatever the facility
5 is, the building is, what sort of authority do they
6 have while they're there? What can they do?
7 A. For a no heat complaint?
8 Q. Yes.
9 A. I understand that they take the temperature of the
10 unit. The law sets what the temperature's supposed
11 to be, or the code sets what the temperature is
12 supposed to be, and they make a determination
13 whether it meets the code or not.
14 Q. Let's assume that an inspector arrives at a
15 property and the temperature is below what the code
16 requires, what then does an inspector do?
17 MR. CHERNETSKY: Objection. Go
18 ahead and answer.
19 A. As I understand it, it's a violation of the code.
20 Q. Okay. And violation, is that a written violation?
21 A. Yes.
22 Q. Okay. And what do they do with that?
23 A. Serve it on the responsible party.
24 Q. Okay. And that would be the property owner?

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1 A. Property owner, yeah.
2 Q. What would then happen with that violation?
3 A. Well, if the issue was addressed, the violation
4 would be dismissed. If the issue was left
5 unaddressed, the matter would be sworn in for
6 court.
7 Q. Are there procedures to follow-up with determining
8 whether or not a violation or a situation has been
9 resolved at a property?
10 A. Sure. They go back and reinspect. That's one way.
11 Q. When do they do that?
12 A. Well, it depends on what the violation was. You
13 know, you're given -- each code gives, you know,
14 time tables of fixing certain types of violations.
15 No heat is an emergency violation. I think you
16 have within 24 hours to respond to that, fix it.
17 Q. Okay. So depending upon what the violation is, if
18 I understand your testimony correct, the code sets
19 out how much time the property owner has to resolve
20 the problem. And is it then the properties --
21 property owner's responsibility to report back to
22 inspectional services?
23 A. Yes.
24 Q. Okay. Does inspectional services go back and

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1 reinspect whether or not they get a notice from the
2 property owner?
3 A. They should.
4 Q. Okay. Are there written policies and procedures as
5 to what they should -- again, I'm talking about
6 2000, written policies and procedures concerning
7 when they're supposed to go back to reinspect?
8 A. There are now. I'm not so sure about 2000.
9 Q. What do your current policies and procedures say
10 about reinspection?
11 A. That when a -- my understanding is that when
12 notified by the landlord that the situation's been
13 resolved, they're required to go back and
14 reinspect.
15 Q. Were there any written policies or procedures of
16 any kind for inspectors to follow back in December
17 2000, that time period?
18 A. I think so. I'm pretty sure there were some. But
19 the code, for example, is one policy and procedure
20 that was written that they had in place.
21 Q. Well, I think my question is more on the lines of,
22 if I understood your testimony, you have very
23 specific policies and procedures about -- regarding
24 reinspection after notification from a landlord or

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1 property owner that something's been resolved.
2 That type of interoffice policy and procedure as to
3 how they were to react in reinspection and
4 violation situations.
5 A. Right. I can't remember, you know, without looking
6 at it and be able to tell you.
7 Q. If there were policies and procedures that existed
8 back then, would you still have them?
9 A. Sure.
10 Q. Okay.
11 A. Department would.
12 Q. Yeah. And, again, if I say you I'm not meaning you
13 specifically --
14 A. Right.
15 Q. -- unless I address it that way.
16 A. Right.
17 Q. Sticking with that, the difference between 2000
18 and currently on the policies and procedures for
19 reinspection, is it your understanding, sir, that
20 in the -- in or about the time period of December
21 2000 there was no requirement that they go back and
22 reinspect after they were noticed, given
23 notification that the situation was cured?
24 A. I -- I think there wasn't a written one. Matter of

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1 responsibility I think they were always required to
 2 go back and reinspect. I think.
 3 Q. So your expectation is that they would go back and
 4 reinspect after given notice that a problem is
 5 cured. Is that -- is my statement correct?
 6 A. That's what my expectation was, and I think the
 7 department required that they -- there's no way,
 8 other way to determine whether or not the condition
 9 is fixed unless you go back and reinspect, as a
 10 practical matter.
 11 Q. Okay. But if the department required it, was it
 12 just -- that was part of the verbal instruction
 13 given to the people that worked in the department
 14 that that's how they were supposed to manage it?
 15 Or was there some --
 16 A. I don't know. I -- I don't know.
 17 Q. Okay. Are there occasions where more than one
 18 inspector is sent out to a property? Again, I'm
 19 dealing with the December 2000 time period.
 20 MR. CHERNETSKY: Are we dealing now
 21 only with no heat complaints?
 22 MR. STOPA: Yeah. Let's -- we'll
 23 restrict all of the questioning to no heat
 24 situations.

1 A. '98.
 2 Q. '98. From 1998 through the present time, how many
 3 times have you personally gone out in response to
 4 complaints for no heat?
 5 A. Hundreds.
 6 Q. And, again, that's if you just decide you want to
 7 go because you want to understand the process
 8 better, or an inspector's requested that you
 9 appear?
 10 A. It's a combination.
 11 Q. If you go to a -- the scene of a report of no heat
 12 violation, or perhaps any violation where you would
 13 go yourself, do you take any of your staff with
 14 you?
 15 MR. CHERNETSKY: Objection. You can
 16 answer.
 17 Q. Do you take any of your staff with you? I'm
 18 talking other than inspectors who may already be at
 19 the scene.
 20 A. Well, I have -- there's an inspector assigned to me
 21 who I usually bring with me whenever I go out.
 22 Q. Who is the inspector that is currently assigned to
 23 you?
 24 A. Paul Nally.

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1 Q. Were there occasions -- strike that.
 2 Under what circumstances might you
 3 send out more than one inspector to a property?
 4 A. If they were requested.
 5 Q. Who sort of information would lead to a request for
 6 more than one inspector?
 7 A. If the inspector that responded first called and
 8 asked for other inspectors to be out there that
 9 they would go. You know, I can't --
 10 Q. I understand.
 11 A. -- conceive of -- I mean, I can't speculate so....
 12 Q. Okay. Under what circumstances would you
 13 personally go to the scene of a reported no heat
 14 problem?
 15 A. Well, my practice has been since I've been there to
 16 sometimes go on inspections so I can understand
 17 what the inspectors do. Sometimes I'd go because
 18 they requested me to go.
 19 Q. Who's "they?"
 20 A. It would be the inspectors.
 21 Q. In the amount of time that you've been the
 22 commissioner, and, again, I apologize that I'm not
 23 remembering, but that was -- when did you become
 24 commissioner?

1 Q. How do you spell his last name?
 2 A. N-a-l-l-y.
 3 Q. And how long has he been assigned to you?
 4 A. Since I would say 1999. That's one of his duties.
 5 He does other things but....
 6 Q. Why is it that you have an inspector assigned to
 7 you?
 8 A. Part of it's just for my personal security, when
 9 threats are on me.
 10 Q. I would take it there are sometimes when you're not
 11 a very popular --
 12 A. -- person.
 13 Q. -- guy.
 14 A. And also for his assistance in some of things that
 15 we've been focusing on are environmentally related,
 16 and he does all of the auto shop, auto shop issues
 17 that relate to the environment. And, you know, I'm
 18 involved in that so I usually have to -- he's the
 19 one that would be with me.
 20 Q. Anyone other than Mr. Nally?
 21 A. Sometimes Inspector Brown.
 22 Q. What's Inspector Brown's full name?
 23 A. Wilbur, Wilbur Brown.
 24 Q. Now, does he -- he's assigned to what division?

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1 A. Special operations.
 2 Q. Where does special operations fall?
 3 A. Investigations and regulatory affairs.
 4 Q. Okay. In which division?
 5 A. I'm sorry. Buildings and structures.
 6 Q. Okay. Anyone else from your staff go along with
 7 you?
 8 A. Generally when -- it's usually me and one of those
 9 two people.
 10 Q. Okay.
 11 A. Sometimes, you know, if there's media there press
 12 people come.
 13 Q. You just anticipated --
 14 A. Sometimes other inspectors if it's a major incident
 15 or a building collapse or a major fire or some
 16 biohazard type thing, you know, more people would
 17 come because they'd be needed.
 18 Q. So you would take your spokesperson or public
 19 relations person with you if you anticipated that
 20 there was -- it was going to be a media event?
 21 A. Yeah, so they could address the issues.
 22 Q. Now, how long have you known Mr. Lincoln -- strike
 23 that.
 24 Do you know Mr. Lincoln Smith?

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1 A. Do I know him. Yeah, I know of him. I mean, I've
 2 met him a couple of occasions, today, 2000.
 3 Q. Prior to 2000, December of 2000, had you ever met
 4 Mr. Lincoln Smith?
 5 A. I don't think I ever met him. I can't remember. I
 6 meet a lot of people.
 7 Q. Did you know of him?
 8 A. Heard his name. You could say I heard his name.
 9 Q. In what context had you heard his name?
 10 A. Just general, from the newspapers.
 11 Q. So you had no personal involvement with Mr. Smith
 12 prior to December of 2000?
 13 A. Not that I recall. I know that he -- he was
 14 represented by Regina Quinlan at one point.
 15 Q. Was that while you and Regina Quinlan were law
 16 partners?
 17 A. I was an associate. You know, if I was, you know,
 18 certainly privilege would attach to me as her
 19 employee, so I wouldn't say anything beyond that.
 20 Q. Did you work on Mr. Smith's piece of litigation
 21 that Miss Quinlan represented him on?
 22 A. Not that I recall. But if I did I'd have to -- I
 23 would assert attorney/client privilege.
 24 Q. I understand. I wasn't going to ask what if

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1 anything you may have done or said, just do you
 2 recall working on his case.
 3 A. I don't.
 4 Q. Do you recall what that piece of litigation
 5 concerned?
 6 A. No.
 7 Q. Well, if I suggested to you it involved a suit
 8 against the City of Boston, would that refresh your
 9 recollection as to what that was relating to?
 10 A. No, not -- other than the city being a defendant, I
 11 don't know what the particulars were.
 12 Q. Okay. Do you recall how that piece of litigation
 13 was resolved?
 14 A. No. Long time ago.
 15 Q. I beg your pardon?
 16 A. I said it was a long time. It was, like, in the
 17 '80s.
 18 Q. Okay. Do you know how many pieces of property
 19 Mr. Lincoln Smith owned in or about the time period
 20 of December 2000?
 21 A. No.
 22 Q. You are aware that a no heat call was received by
 23 the city for a piece of property that Mr. Lincoln
 24 Smith owned in December of 2000.

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1 MR. CHERNETSKY: Is that a question?
 2 MR. STOPA: Yes.
 3 MR. CHERNETSKY: Would you repeat it.
 4 MR. STOPA: Well, strike that
 5 question.
 6 Q. In December of 2000, did there come a time when you
 7 were at Mr. Lincoln Smith's property located at 11
 8 Newport Street, Dorchester?
 9 A. Yes.
 10 Q. And when was that?
 11 A. It was in -- best I can remember, it was in
 12 December or January of 2000.
 13 Q. And why were you there? You individually.
 14 A. I can't remember why I was there, but I know I was
 15 there.
 16 Q. Do you recall what kind of property that is at 11
 17 Newport Street?
 18 A. I think it was some sort of a residential building,
 19 if I can remember.
 20 Q. But you don't remember if it was a triple-decker
 21 versus an apartment building?
 22 A. I'm sorry. As I sit here I don't.
 23 Q. Okay. And, I'm sorry, your testimony is you're not
 24 sure why you personally went to that location that

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1 night or that day?

2 A. Why -- I think the inspectors asked me to go, as I

3 remember.

4 Q. Any idea as to why?

5 A. I think the issue was that they were having

6 difficulty getting Mr. Smith to restore the heat.

7 Impression was that they were afraid of Mr. Smith

8 given his position with the city.

9 Q. What is your understanding as to what his position

10 with the city was at that time?

11 A. I think he was city -- I knew him to be a city --

12 my impression was that he was a city official. I

13 didn't know which department but they seemed to.

14 Q. Do you recall in response to the original --

15 strike that.

16 The reason for being at Mr. Smith's

17 property at 11 Newport Street was a report of no

18 heat. Is that correct?

19 A. As I understand it, yes, no heat, right.

20 Q. And do you have a recollection of what day it was

21 that your office received the report of no heat?

22 A. No.

23 Q. Okay. Is it --

24 A. I can't.

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1 Q. Do you have a recollection as to whether you were

2 out there on the day the no heat was reported or on

3 some later day?

4 A. My memory is it was a later date. And the issue

5 was the difficulty in getting Mr. Smith to turn on

6 the heat after some time had passed.

7 Q. Was it a matter of him not turning on the heat or

8 there had to be repairs?

9 A. Well, as I -- there was -- he was -- as I

10 understood it at the time, he had been cited for a

11 faulty boiler, and the boiler hadn't been repaired.

12 And they were reluctant or afraid of Mr. Smith and

13 they asked me to go.

14 Q. Is it your understanding that your inspectors read

15 this as a politically sensitive situation because

16 Mr. Smith worked for the City of Boston?

17 A. I think they were afraid of retaliation if he --

18 retaliation from him if they performed their duties

19 to get him to turn his heat back on. My impression

20 I had.

21 Q. What authority would -- and I'm talking December

22 2000. What authority would have Mr. Smith --

23 strike that.

24 What authority might Mr. Smith have

1 had over any of your employees during that time

2 period?

3 MR. CHERNETSKY: Objection.

4 A. I don't know.

5 Q. Well, what is your understanding as to the nature

6 of their fear? What did they think he was going to

7 do?

8 A. I have no idea.

9 Q. Now, when you arrived at the 11 Newport Street

10 property, how many other of your people were there?

11 A. I don't remember.

12 Q. Do you remember the specific names of anybody who

13 was there?

14 A. No.

15 Q. Do you recall that the issue relating to the heat

16 was resolved?

17 A. It became resolved while we were there.

18 Q. Do you recall how it was resolved?

19 A. I think Mr. Smith stated he hired a contractor to

20 fix the boiler, and that when the contractor said

21 that he had been paid money by Mr. Smith to fix the

22 boiler in my mind that was resolved.

23 Q. Okay. Do you have a recollection that the no heat

24 call came in to your office approximately two days

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1 before Christmas? Do you recall that?

2 A. I don't know the specific amount of days. There

3 was a time frame from the time the call came in and

4 the day I went out there.

5 Q. Okay.

6 A. Two, three, four days. I don't, you know,

7 precisely recall it.

8 Q. Other than the day that you went out to the

9 property, had you become personally involved in the

10 no heat problem at 11 Newport Street?

11 A. No.

12 Q. As a part of your involvement, did you ever inquire

13 as to what efforts Mr. Smith had made prior to that

14 day that you were on the property to cure that

15 problem?

16 A. No.

17 Q. Did any of your staff suggest to you that they had

18 inquired as to what efforts he had taken?

19 A. Not that I recall.

20 Q. If someone calls in a no heat problem, a tenant, I

21 take it there's some effort that is made to contact

22 the property owner?

23 MR. CHERNETSKY: Objection.

24 Q. Is that part of your practice and procedure?

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1 A. I think so.

2 Q. Well, would you anticipate that your inspectors if
3 they're on the scene for a reported no heat would
4 then effort to find out who owns the property?

5 A. Oh, sure, yeah.

6 Q. Okay. And let's assume for the purposes of this
7 next couple of questions that we have a situation
8 that requires the replacement of a furnace or
9 boiler. Okay? Are property owners permitted to
10 take steps other than the immediate replacement of
11 the furnace in order to cure the no heat problem?

12 A. That's a better question for the inspectors. My
13 understanding is that if the codes allow that to
14 occur it can.

15 Q. Okay. Well, let's apply that aspect to our factual
16 base. As I suggested with my question before,
17 we're talking in or around the time period of
18 Christmas 2000. Is that also your understanding?

19 A. Late December, early January. I don't -- that's
20 all I remember.

21 Q. Okay.

22 A. What I know it was very cold, very cold. I
23 remember you could -- it was very cold. It was a,
24 you know, like a cold spell like we just had this

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1 January, was my understanding of what it was.
2 Again, it was a span of three, four days, late
3 December, early January.

4 Q. Well, if I suggested to you that the call for no
5 heat came in to your office at around 4:45 in the
6 evening on December the 23rd, would you have any
7 reason to think that that was inaccurate?

8 A. If you've checked the record, no.

9 Q. Okay.

10 A. Well, if that's what it is that's what it is. I
11 won't argue with you over that.

12 Q. Let's assume that then, because I'll suggest to you
13 that that's what I pulled from the documents.

14 And that around 6:30 that evening
15 after your -- one of the inspectors had gone to the
16 property Mr. Smith was notified that there was a
17 problem with no heat. Okay? So let's assume that.
18 In regards to your -- the practices and procedures
19 of your department, would it have been acceptable
20 for Mr. Smith to purchase and take to the property
21 space heaters --

22 MR. CHERNETSKY: Objection.

23 Q. -- to temporarily resolve the no heat problem?

24 A. I don't know.

1 Q. Well, would you have had -- if you were out on the
2 scene and Mr. Smith had suggested to you that he
3 was bringing space heaters over to keep the tenant
4 warm, --

5 MR. CHERNETSKY: Objection.

6 Q. -- would that have caused a problem in your mind?

7 A. Well, be asking that of the inspectors. The
8 inspectors make those determinations, not me. I'm
9 the commissioner. The inspectors deal with these
10 things on a case-by-case basis. And if space
11 heaters are a solution and they accept the space
12 heaters, that's up to them.

13 Q. So it's solely within the authority of the
14 inspector to decide whether that's an appropriate
15 resolution?

16 A. It's their job. That's -- I rely on them to
17 administer the code. I don't tell them what to do.
18 I rely on their judgment under all these situations
19 to do the proper thing.

20 Q. In the hundreds of times that you've gone out to
21 properties together with your inspectors, have you
22 ever personally witnessed a tenant who wouldn't
23 permit a landlord to make repairs?

24 A. No.

1 Q. Not once, ever?

2 A. No.

3 Q. Do you have a recollection of Mr. Smith telling you
4 that he attempted to bring space heaters in to the
5 apartment at 11 Newport Street to correct that
6 situation on a temporary basis but wasn't permitted
7 to do so by the tenant?

8 A. Not that I recall, no.

9 Q. You have no recollection of ever hearing that
10 before?

11 A. No.

12 Q. Okay. If I suggested to you that the records
13 indicate that you were on the premises of 11
14 Newport Street on December the 27th, would that
15 comport with your recollection?

16 A. Two or three days in late December.

17 Q. Okay. And while I understand your earlier
18 testimony was that you don't remember how many
19 people might have been on the property at the time,
20 do you recall that Mr. Smith's contractor was on
21 the property when you arrived?

22 A. Not when I arrived. There was a contractor there,
23 and I never found out who the contractor -- they
24 could never figure it out, whose contractor it was,

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1 when I arrived.

2 Q. Well, do you have a recollection that the -- that

3 you or somebody on your staff had taken a

4 contractor there?

5 A. I think that the inspectors had brought a

6 contractor there, but I'm not certain about that.

7 Q. Do you have a recollection of what your involvement

8 was in the process as it took place on the property

9 that day?

10 A. A little bit.

11 Q. What is it that you recollect that you did while on

12 the premises that day?

13 A. I think I accompanied the inspectors inside the

14 house, saw the basement was -- the oil burner or

15 the boiler, whatever it was was pointed out to me,

16 was covered in soot. There was a person walking

17 around, and he was covered in soot. And then

18 Mr. Smith came along. He had some conversations

19 with the inspectors, and then it was brought to my

20 attention that he had made arrangements with the

21 contractor to fix the boiler. And the contractor

22 confirmed that he had been paid or had a contract

23 to do it, and as far as I was concerned the issue

24 was resolved because he was going to fix the

1 A. No.

2 Q. Do you recall that there was an issue over a

3 cracked heat exchanger in the furnace unit?

4 A. No.

5 Q. Do you recall that Mr. Smith's contractor told you

6 and the other persons there, that if the old unit

7 was turned on that carbon monoxide would get into

8 the house?

9 A. No, no. I --

10 Q. No recollection?

11 A. Soot, there was something about soot. All I heard

12 was about soot.

13 Q. So your testimony, sir, is after you were able to

14 determine that Mr. Smith had a contractor there who

15 was contracted to make the repairs you were

16 satisfied and you left.

17 A. Yes.

18 Q. Did you have an opportunity to speak directly with

19 Mr. Smith that evening?

20 A. I think so.

21 Q. Do you recall what you said and what he said?

22 A. Specifically, no.

23 Q. Generally, do you recall the conversation?

24 A. I think he introduced himself to me, and I think I

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1 boiler. And I went on my way.

2 Q. Do you have a recollection of telling Mr. Smith

3 that you were not going to permit his contractor to

4 make the repairs?

5 A. No. I don't think I would have said permit his

6 contractor to make the repairs. I think I would

7 have said that it was that unless he showed me that

8 he had a signed contract with his contractor to

9 make the repairs, I wasn't going to believe that

10 the thing had been resolved.

11 Q. Well, if Mr. Smith was there and his contractor was

12 there, why is it that you had to inquire further

13 into their relationship?

14 A. Because I didn't know if they had made -- come to

15 an agreement yet until they told me.

16 Q. Do you remember telling Mr. Smith that he was going

17 to have to pay for the inspectional services repair

18 contractor that was on the site?

19 A. No.

20 Q. Do you recall telling Mr. Smith that you had taken

21 over the job?

22 A. No.

23 Q. That you were not going to permit his contractor to

24 make any repairs?

1 told him that I was concerned about that the heat

2 had been off for an extended period and it appeared

3 to me that he hadn't made any arrangements to get

4 it restored, and that elderly tenants could --

5 generally, elderly people are more susceptible to

6 health problems and cold weather and he should be

7 taking care to get it restored.

8 Q. And what is your recollection as to what Mr. Smith

9 said in response to that?

10 A. I think he indicated that he had a contractor. And

11 I said that -- I think I said -- well, I can't

12 remember exactly what I said, but he then indicated

13 to me that he had paid the contractor, made a

14 contract with him, the contractor confirmed that,

15 and then I left.

16 Q. Did you give your inspectors any other

17 instructions when you left the property?

18 A. Just told them to be thorough, you know, make sure

19 the heat's restored.

20 Q. Do you recall telling inspectors or an inspector

21 there, "Write up every violation you can find?"

22 A. I don't recall saying that.

23 Q. Might you have said it?

24 A. Probably could have said be very thorough in your

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1 inspection.
2 Q. Did you have an understanding as to how many
3 property -- I know I asked you this earlier,
4 whether you knew Mr. Smith -- how many properties
5 he owned at that time period.

6 Did you have an understanding as you
7 were standing there how many buildings he owned?

8 A. No.

9 Q. Okay.

10 A. No.

11 Q. Did you ever tell Mr. Smith that day or evening
12 that you were going to treat him the same way you
13 treated Cliff Davis?

14 A. I don't remember those exact words, but I indicated
15 to him that my department was going to treat him
16 the same as any other landlord, you know, just
17 wasn't -- the issue was no heat, and regardless of
18 the status of the city employee he would be held to
19 the same standard that all landlords were held to.

20 Q. Well, did he ask for any favors?

21 A. From me, no.

22 Q. Did he ask for a favor from anybody?

23 A. I don't know.

24 Q. Did Mr. Smith ever raise the issue of him being a

1 City of Boston?

2 A. I don't know.

3 Q. What was your involvement with Mr. Davis?

4 A. Just as a commissioner of inspectional services.

5 Q. Was there a particular problem with Mr. Davis and
6 his properties?

7 A. Yes.

8 Q. What sort of problem?

9 A. Multiple code violations.

10 Q. Did the issues relating to Mr. Clifford Davis end
11 up in litigation?

12 A. They would get sworn out into housing court, a lot
13 of his violations. It's probably a lot of housing
14 court cases.

15 Q. Did Mr. Davis ever bring suit against the city or
16 you?

17 A. I don't know. I don't know.

18 Q. Well, did there come a time when Mr. Davis's
19 properties were no longer an ongoing issue?

20 A. They're less of an issue now. I think he made an
21 effort to clean his properties up and be more
22 responsive. I haven't heard his name in a couple
23 years, so that's a good thing.

24 Q. Okay.

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1 city employee?

2 A. To me, no.

3 Q. To your knowledge, did he raise that to anyone
4 there?

5 A. Inspectors I think.

6 Q. What leads you to believe that?

7 A. The impression I had from them.

8 Q. Which inspector had called you to come out there?

9 A. I think it was Steve O'Donnell.

10 Q. Do you know what Mr. Steve O'Donnell said to you
11 in making the request?

12 A. No. I can't recall. I don't remember.

13 Q. Who is Cliff Davis?

14 A. Cliff Davis was a known landlord in the city that
15 owned a lot of properties in substandard
16 conditions.

17 Q. Was that during your tenure as a commissioner?

18 A. It's partly during my tenure, partly during the
19 tenure of the former commissioner John Eade.

20 Q. I'm sorry, who?

21 A. John Eade.

22 Q. How do you spell his last name?

23 A. E-a-d-e.

24 Q. Does Mr. Davis continue to own properties in the

1 MR. CHERNETSKY: When you're done,
2 I'd like to take a break just for myself.

3 MR. STOPA: Sure.

4 (A short break was taken.)

5 MR. STOPA: Okay. Let's go back.

6 MR. CHERNETSKY: Sure.

7 Q. Okay. Was your public relations aid, John Dorsey,
8 there that evening, December 27th?

9 A. At some point.

10 Q. Did you call him to come there?

11 A. No.

12 Q. Why did he show up, then?

13 A. Why? I don't think I can answer why.

14 Q. I'm sorry, you don't think --

15 A. I would assume he had calls from the news media.
16 I would assume.

17 Q. Why would there be calls from the news media for a
18 no heat call for 11 Newport Street in Dorchester?

19 A. No --

20 MR. CHERNETSKY: Objection.

21 A. I have no idea.

22 Q. Okay. And, actually, I made a couple references to
23 this being in the evening, but I never asked you.

24 Do you recall what time of the day it

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1 was that you were at 11 Newport Street on December
2 the 27th?
3 A. It was -- it was dark and cold, so I would say late
4 afternoon, early evening.
5 Q. Well, let's try to figure out what people were at
6 the scene. You know that Mr. Dorsey arrived there
7 at some point.
8 A. Right.
9 Q. Was that after your arrival?
10 A. Yes.
11 Q. And how did you personally get there?
12 A. I probably went there with Paul Nally.
13 Q. Okay.
14 A. If I remember right.
15 Q. And I think you think you said Mr. O'Donnell was
16 involved with this transaction in some way?
17 A. Right. Mr. O'Donnell and some inspectors.
18 Q. Is -- Mr. O'Donnell is an inspector, right?
19 A. Mr. O'Donnell is a manager. There's some
20 inspectors involved, which I don't remember who
21 they were.
22 Q. Why was Mr. O'Donnell there, then?
23 A. Supervisor. I don't know.
24 Q. Well, from your experience as the commissioner, on

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1 an average winter, cold winter type day, how many
2 calls for no heat does your department get?
3 A. I have -- well, I don't know. This year since the
4 cold snap in January we've had about a thousand
5 calls for no heat.
6 Q. For the season?
7 A. Since January, since the --
8 Q. Since January.
9 A. Since the first cold snap in mid January. If I
10 remember right, you know.
11 Q. Well --
12 A. You're asking me stuff about four years ago. I
13 can't remember where I was two days ago.
14 Q. No, no. Let me reask the question, then. I'm not
15 asking specifically about two years ago. I'm
16 talking about in your experience as commissioner.
17 On average through most winters you get calls for
18 no heat in the wintertime, correct?
19 A. Correct.
20 Q. And you get calls for no heat every day. Is that
21 a fair statement?
22 A. It's temperature driven. If the temperature drops
23 below 20 degrees, we get a perceptible increase in
24 no heat calls.

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1 Q. Okay.
2 A. So, you know, that's -- and it goes with what the
3 temperature is. It's hard to say. But this year I
4 know we've had about a thousand up until now since
5 the cold snap in January.
6 Q. Okay. So that's probably better than 30 a day
7 since January for this year.
8 A. But not every day was cold, so it could be 60 a
9 day.
10 Q. I understand. Again, I was talking on average.
11 Okay. So now let's go back to
12 December of 2000.
13 A. Right.
14 Q. If I suggested to you that 11 Newport Street is a
15 triple-decker, do you have any reason to suggest --
16 that your memory thinks otherwise?
17 A. No, not really. I just can't remember what it is.
18 Q. Okay. And that was a cold period?
19 A. I remember it being cold, right.
20 Q. Okay. So at 11 Newport Street we have
21 Mr. O'Donnell who's -- I'm sorry, what was his --
22 A. He's a manager.
23 Q. Manager.
24 A. Right.

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1 Q. How many inspectors does he manage?
2 A. Fifteen maybe.
3 Q. Okay. And how many of his inspectors were out
4 there with him?
5 A. I think there were two or three of them.
6 Q. So we have Mr. O'Donnell; we have two or three
7 inspections. We have the commissioner because you
8 were out there.
9 A. Right.
10 Q. And we have Mr. Dorsey who was your public
11 relations person.
12 A. Right.
13 Q. Mr. Nally who's your personal inspector.
14 A. He's assigned to me.
15 Q. I'm sorry. Wrong terminology.
16 Anybody else out there?
17 A. Not that I can remember.
18 Q. Quite crowded, though.
19 A. Well, Lincoln Smith, we had a couple contractors,
20 we had some tenants.
21 Q. Okay. Do you recall anybody else from your office
22 being there?
23 A. Do I recall?
24 Q. Yes.

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1 A. As I -- no, not -- no.
 2 Q. Did you request anybody else to come --
 3 A. No.
 4 Q. -- and they were unable to attend?
 5 A. Not that I recall, no.
 6 Q. So we've got all these people out there for a no
 7 heat call at 11 Newport Street, and in that group
 8 are two contractors. Is that right?
 9 A. I think so.
 10 Q. Okay. And one of those contractors was
 11 commissioned to the scene by someone on your staff?
 12 A. As I understand it, yes.
 13 Q. Okay. How is it that your staff determines who to
 14 call in if they have to call a contractor in?
 15 A. I think there's -- they had -- there was a protocol
 16 they have to follow.
 17 Q. Well, do you have a list of contractors that are
 18 approved?
 19 A. I think so. I think that's how it works.
 20 Q. Well, who determines who's on that list?
 21 A. It would be the city.
 22 Q. Who the city? Who in the city?
 23 A. You know, I don't know. No particular person. I
 24 know there's procedures they have to follow to make

1 to do with that property after your visit of that
 2 day?
 3 A. Not that I recall.
 4 Q. Who is Evangeline Davis?
 5 A. She's a supervisor, another supervisor. Like
 6 Mr. O'Donnell she's sort of the same -- she's an
 7 MM7; he's an MM7.
 8 Q. And what was her involvement with this property,
 9 11 Newport Street?
 10 A. I don't know.
 11 Q. Was she there that night or that afternoon?
 12 A. I don't know.
 13 Q. Have you ever been made aware that Miss Davis
 14 brought up 17 violations for Mr. Smith's property
 15 as a result of that visit on December the 27th?
 16 A. Not that I recall.
 17 Q. Do you recall if you ever had any conversation with
 18 Miss Davis after that date regarding the handling
 19 of violations at 11 Newport Street?
 20 A. No. I don't think I ever spoke to her about this.
 21 Q. Do you have any recollection of telling Miss Davis
 22 this was a special investigation and that all
 23 aspects had to go through your office?
 24 A. Not that I recall.

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1 those kinds of lists so.... In this particular
 2 instance I don't know. I don't know.
 3 Q. So in some fashion the city has an approved
 4 contractors list, and that's made available to you
 5 should you need a contractor of that variety?
 6 A. The inspectors it is. And, again, I don't remember
 7 -- I don't manage the day-to-day nitty-gritty
 8 details of this. I understand there's a process
 9 that they have -- contractors that they can call in
 10 these instances when they need them.
 11 Q. And, again, I was making reference to the
 12 figurative you, your department.
 13 A. Yeah. The department has it. You know, the
 14 particulars I don't know.
 15 Q. Okay. So you left the scene of 11 Newport Street
 16 on December 27th satisfied that there was a
 17 contractor who was making the repairs on behalf of
 18 the property owner.
 19 A. Right.
 20 Q. Okay. Do you know if any other violations were
 21 written up for that property as a result of the
 22 inspectors being on location that day?
 23 A. No. No.
 24 Q. Did you have any involvement with anything having

1 Q. Are there occasions where there are special
 2 investigations where everything that happens in the
 3 investigation has to go through you or your office?
 4 A. I mean, back then, in the year 2000, if there were
 5 multiple violations on a property, those would go
 6 through my office so that the violator would be
 7 given a comprehensive package of all of the
 8 violations that affected the property rather than
 9 get them piecemeal from the separate divisions of
 10 the department. It was more of a -- it was a
 11 coordination thing that we would try to implement
 12 and then -- you know, it's different now but back
 13 then they were being handled by my office.
 14 Q. Well, do you have a recollection of that type of
 15 involvement with Mr. Smith's property?
 16 A. No, no.
 17 MR. STOPA: Let's mark this as one
 18 document, please.
 19 (Exhibits 1 and 2 were marked for
 20 identification.)
 21 Q. Sir, let me show you what's been marked for
 22 Exhibit 1 for identification, ask you to take a
 23 look at that.
 24 A. (Witness reading documents.)

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1 Q. Okay. Now, having had a chance to look at that,
 2 do you recall ever seeing that?
 3 A. No.
 4 Q. Those documents before?
 5 A. No.
 6 Q. Okay. On the second page of the notice of
 7 violation, signature -- a signature written, Julie
 8 Fothergill, Esquire is there, and there are
 9 initials next to that. Do you know whose initials
 10 those are?
 11 A. LL? LP?
 12 Q. Who might have signed that on behalf of
 13 Miss Fothergill, if you know?
 14 A. I have no idea. LP. LP? Could be a clerk.
 15 Q. Okay. Do you have a recollection of instructing
 16 anyone to send out this notice of violation and the
 17 attached notices?
 18 A. Not that I recall.
 19 Q. You don't have any recollection of getting involved
 20 with that transaction?
 21 A. No.
 22 Q. Okay.
 23 A. Other than, you know, generally. That was Julie's
 24 job. That's what she did, she put together these

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1 types of things.
 2 Q. When you say "these types of things," can you be a
 3 little more specific, please?
 4 A. These multiple violations. When -- some of them
 5 are from the housing unit, some of them are from
 6 the building department, building division. So one
 7 of the things that this process was designed to do
 8 was give you your violations from the separate
 9 divisions in one package so that you could better
 10 understand the issues that you needed to deal with.
 11 Q. Okay.
 12 A. Prior to -- the other way that it was done was
 13 piecemeal. You might get some violations from
 14 housing, and you might get some violations from
 15 building, not at the same time but relating to the
 16 same incident. There was, you know, a whole --
 17 there was a lot of criticism against the department
 18 for doing business in that fashion, so we were
 19 trying to change the process so people would
 20 understand from the beginning what the total
 21 picture was. That's the way I can explain it best.
 22 Q. Okay. I think I understand that. Okay.
 23 So this package of violations goes out
 24 from your office over the name of Julie Fothergill,

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1 who's the director of policy and planning. What
 2 involvement did your office have in regard to those
 3 violations after that date? And, again, this is
 4 dated December 28, 2000.
 5 A. I don't know. I don't know.
 6 Q. Do you know who was to conduct the reinspections?
 7 A. No. I would assume the inspectors that were
 8 involved in the case.
 9 Q. But your testimony is you personally did not any
 10 involvement with this after that date.
 11 A. No.
 12 Q. Do you recall Mr. Smith having contact with your
 13 office concerning open violations following this
 14 notice of December 28, 2000?
 15 A. No.
 16 Q. Do you have any recollection of Mr. Smith notifying
 17 your office that he had cured some or all of these
 18 violations but that no one was reinspecting?
 19 A. No. No.
 20 Q. Let me show you Exhibit 2 for identification, ask
 21 you to take a look at that.
 22 A. (Witness reading document.)
 23 Q. Do you recall ever seeing Exhibit 2 before?
 24 A. No.

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1 Q. Looking at the last page, there's a certified mail
 2 card that's addressed to you and it's signed for.
 3 Is that your signature?
 4 A. No.
 5 Q. Do you know whose it is?
 6 A. No idea. Hard to read. I have no idea. But I
 7 could have seen it, you know. I'm not disputing
 8 that. I just don't recall it.
 9 Q. Okay. Did you ever instruct anyone on your staff
 10 not to close out open violations at 11 Newport
 11 Street?
 12 A. No, I wouldn't do that. Generally, what we try to
 13 do is make sure everything's resolved at the same
 14 time.
 15 Q. How -- tell me how that impacts the question I just
 16 asked.
 17 A. What?
 18 Q. How does that impact the question I just asked?
 19 A. If you get multiple violations before we close out
 20 the case, we like to see everything resolved or at
 21 least a plan put in place as to some -- sometimes
 22 it's things that you can't fix right away that --
 23 you know, structural things that, you know, that
 24 requires months of work. Generally, we like to

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1 keep them together and close it off all at once
 2 when the work's completed.
 3 Q. And violations, do they come in different
 4 categories?
 5 A. Yes.
 6 Q. Some sort of major violation --
 7 A. Right.
 8 Q. -- category?
 9 Do you have -- what sort of
 10 terminology do you put on them? If it's what I
 11 would term as a major violation, some very
 12 problematic structural difficulty, for instance,
 13 how would your office label that?
 14 A. The inspectors would do that.
 15 Q. I understand.
 16 A. They --
 17 Q. What kind of a word do they associate with it?
 18 Again, for instance, I used the word major
 19 violation. What would your office use?
 20 A. I'd say the same thing. I would say it was a major
 21 violation.
 22 Q. Okay.
 23 A. It's technical, you know. Certain things require
 24 immediate -- like, no heat, stick with no heat is

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1 the best example. No heat in the heating season by
 2 law requires immediate attention. Similarly, there
 3 might be some element of a building that would
 4 require immediate attention or some, you know, food
 5 thing that requires immediate attention and that's
 6 all -- some codes are more specific than others, so
 7 it's clearer under some codes what's more immediate
 8 in nature.
 9 Q. Okay. So if I understood your testimony in regard
 10 to this package of notice -- violation notices and
 11 closing out the case, it was the habit and practice
 12 of your office to keep the entire case open until
 13 you've taken care of all of the individual
 14 violations.
 15 A. Right.
 16 Q. Is that what your testimony was?
 17 A. Right.
 18 Q. And then you would close the entire case at once?
 19 A. Right. And if something was resolved -- it's a
 20 checklist. Those things are checklists. Five of
 21 them might be fixed, and they're not going to move
 22 forward on the five that are fixed. They're only
 23 concerned about the two remaining and then they
 24 sign it off all together.

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1 Q. During your tenure as a commissioner, have you seen
 2 situations where problems at residential dwellings
 3 are sometimes caused by the people who live there?
 4 A. Sometimes. Sure.
 5 Q. Tenants break things. Is that a fair statement?
 6 A. Sure. I'm not -- sure.
 7 Q. Does your office take into consideration problems
 8 with tenants in regard to violations which are
 9 noticed?
 10 A. More so now I think than we did then.
 11 Q. How do you deal with it now?
 12 A. I think that inspectors are more -- over the last
 13 couple of years we've been able to establish more
 14 communication with property owners, and we've done
 15 a lot of outreach with property owners. And we run
 16 seminars for the property owners so they understand
 17 their obligations. I think previously that kind of
 18 outreach hadn't been undertaken and people were
 19 confused about what their responsibilities were.
 20 Q. Okay.
 21 A. So now we try to explain things to people in a more
 22 positive position. And the inspectors are more
 23 aware, or we try to make them more aware, that a
 24 lot of these conditions might arise because of the

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1 tenant. And there's all sorts of landlord tenant
 2 disputes, and we're always in the awkward position
 3 of having to arbitrate them. So we try to get
 4 comfortable in addressing both sides and bring them
 5 together.
 6 Q. Is Miss Evangeline Davis still employed with
 7 inspectional services?
 8 A. Yes.
 9 Q. Same position?
 10 A. She could have been an inspector at the time. She
 11 -- sometimes she's -- for staffing reasons she
 12 sometimes is an acting manager. That's what it is.
 13 Q. Okay.
 14 A. So right now she's an inspector.
 15 Q. She has on occasion been --
 16 A. Yes, yes.
 17 Q. Okay.
 18 A. See, my memory's all foggy. She could have been an
 19 inspector then.
 20 Q. Okay. Which would explain why her name would have
 21 appeared on one or more of these documents.
 22 A. Yeah. That's probably it. There's three managers
 23 over there, and when one goes out for an extended
 24 period we -- she's been known -- she's been put

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1 into an acting managers slot before.
 2 Q. Okay. So in or about December 2000, do you have a
 3 recollection if she was an acting manager then or
 4 simply an inspector?
 5 A. I don't but you can check the records. The records
 6 will tell you.
 7 Q. What records would tell you that?
 8 A. The city records. If you're acting as a manager,
 9 they have to sign papers for it, put papers
 10 through.
 11 Q. So if that became an issue in some way, there would
 12 be a way to find out whether she was or not?
 13 A. Yes.
 14 Q. Do you recall making any comments to anyone in the
 15 media, any type of media, concerning Mr. Lincoln
 16 Smith?
 17 A. Do I recall it?
 18 Q. Yes.
 19 A. No. Personally you're asking?
 20 Q. I'm asking you personally.
 21 A. Not that I recall.
 22 Q. Do you have -- okay.
 23 Do you have any recollection of
 24 instructing anyone on your staff to issue a

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1 statement or information regarding Mr. Smith?
 2 A. I could have.
 3 Q. What leads you to believe that you could have? Do
 4 you have a recollection of something?
 5 A. Well, the fact that John Dorsey was there, you
 6 know.
 7 Q. Do I take it then from that answer that you don't
 8 have any specific recollection?
 9 A. No, no.
 10 Q. Do you recall --
 11 A. It would just be speculation.
 12 Q. Okay. Do you recall in or about that time period
 13 there was some sort of a list about the city's
 14 worst landlords?
 15 A. There was speculation about a list of the city's
 16 worst landlords. I don't think there was ever a
 17 list generated. I never -- never. People have
 18 asked me that before. I haven't seen it.
 19 Q. Okay. So if I understand your testimony, your
 20 office didn't prepare or keep a list of the city's
 21 worst landlords?
 22 A. To my knowledge, no.
 23 Q. Well, did your office keep a list of which
 24 landlords had the most violations, statistical

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1 analysis?
 2 A. To my knowledge, no.
 3 Q. In that time period, December 2000, did your office
 4 keep statistics of any kind?
 5 A. Other than what's kept on the city -- the city
 6 system for purposes of budget and accounting and
 7 the number of permits, numbers of complaints and
 8 things like that, no.
 9 Q. When you say the city's system, what sort of
 10 information is kept there?
 11 A. Financial information, number of complaints, number
 12 of permits issued in the different categories.
 13 Q. Let me ask you this. If someone you had to respond
 14 to suggested to you, go find out who -- which
 15 landlord has the most violations in the city for
 16 the year 2003, would you have the ability to get
 17 that information?
 18 A. The only way you could do that is go into community
 19 buildings. You could I suppose run -- you could
 20 run -- you could run the address and it would give
 21 you the number of complaints against the address.
 22 It would give you the complaints.
 23 Q. Okay.
 24 A. It wouldn't give you -- there's no way to --

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1 there's no way to put someone's name in and show
 2 you how many complaints they've got.
 3 Q. Okay. So the record keeping --
 4 A. That I know of.
 5 Q. Okay. So the record keeping of violations
 6 currently, let's do currently, currently is such
 7 that you can research a property and determine how
 8 many violations that property's had. Is that
 9 correct?
 10 A. Correct.
 11 Q. But you don't have the ability to cross-reference
 12 an owner's name, either an individual or
 13 corporation, to see what all of their properties
 14 had done?
 15 A. Correct.
 16 Q. Do you have the ability to research an owner and
 17 determine how many properties an owner has?
 18 A. Um.... No, no, no. That would be time consuming.
 19 You would have to know what property a person
 20 owned. We don't have a -- we can't tie it in to a
 21 property, we could only go by addresses.
 22 Q. So all of your computerized record keeping is done
 23 by address?
 24 A. Yeah.

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1 Q. Do you have a recollection of ever saying to
2 anyone in the media that Mr. Lincoln Smith was one
3 of the city's worst landlords?

4 A. Not that I know of.

5 Q. Do you recall if anyone -- do you have any
6 recollection of anyone on your staff making such a
7 statement to any outlet, media outlet?

8 MR. CHERNETSKY: What time period are
9 we talking about?

10 MR. STOPA: Following December 2000.

11 A. Not that I know. I know that Dorsey handled the
12 media on this. I think. But beyond that, not
13 specifically what was said. I don't know.

14 Q. So what I need to have an understanding is, you say
15 that Dorsey handled the media on this. What sort
16 of media involvement was there, as you recall?

17 A. There was media involvement. I think there was a
18 couple of newspaper stories about it, and Dorsey
19 handled it, is what I recall.

20 Q. How did the newspapers find out about it?

21 A. I don't know.

22 Q. Do you recall someone from your office notifying
23 them?

24 A. I don't recall that, no.

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1 Q. Well, does your office on occasion bring matters of
2 interest to newspapers and other media?

3 A. On occasion.

4 Q. And on other occasions they come to you with
5 inquiries concerning issues?

6 A. Yeah. Usually, if the news media -- as I
7 understand it, I'm not the press person, but I've
8 been told that if one TV station calls you about
9 something, you notify all the other TV stations,
10 for example. It's part of business. That's how
11 they operate. So I can't say that it happened in
12 this case.

13 Q. Well, when you say they operate, they work for you.

14 A. Well, the press part of it I don't -- you know,
15 they work for me and they -- they're in that
16 industry, so they handle the press. I try to stay
17 away from it.

18 Q. Well, the press people you have on staff, who do
19 they take their lead from? Who do they report to?

20 A. Me. But just like the inspectors, they handle the
21 details of the situation as it presents itself to
22 them. I trust their judgment and rely upon them to
23 do their jobs.

24 Q. But as commissioner you are -- you drive the

1 policy of the whole department, do you not?

2 A. I certainly do.

3 Q. So how would your press people know how much media
4 attention you want to be exposed to?

5 A. I -- personally, I try not to be involved in the
6 media. I tell them I don't want to be involved in
7 it. People handle it.

8 Q. Well, then, under what circumstances -- if your
9 personal policy and your theory for running your
10 department is such that you want to avoid the media
11 or be exposed to the media, under what
12 circumstances do you have your staff contact the
13 media to bring issues to their attention?

14 A. If we were announcing a program or a procedure or
15 something that the people want to know about, if
16 we're trying to do educational things, community
17 outreach, announcing some new program in the
18 community that's going to be a benefit for
19 everybody that you -- proactive stuff. If we get
20 calls from the media, they have to respond to them.
21 I leave it to them as to how they respond or to who
22 they respond.

23 Q. Under what circumstances do you have your staff be
24 proactive when it comes to individual property

1 owners and violations on any of the properties?

2 A. I don't.

3 Q. So if I understand your testimony, there isn't any
4 chance that it was your staff that initiated the
5 media's interest in Mr. Smith's property at 11
6 Newport Street?

7 MR. CHERNETSKY: Objection.

8 A. Any chance? I don't know. I can't say that.

9 Q. Well, under what circumstance would you have your
10 staff report to the media that there was this --
11 this problem at Mr. Smith's property?

12 A. I wouldn't.

13 Q. Well, with whatever guidance you give your media
14 people on your staff, under what circumstances
15 would you expect that they would take that issue to
16 the media on a proactive basis?

17 A. Only in response -- I would say in response to a
18 call from the media.

19 Q. So the only way that your staff would have contact
20 with the media is if the media contacted them in
21 regards to Mr. Smith's property?

22 A. It's pure speculation, but that's generally what I
23 would expect.

24 Q. Well, and I'm -- that's what I'm trying to define

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1 here, trying to take some of the speculation out.
 2 So given a circumstance like you were
 3 faced with on December the 27th, 2000, under your
 4 watch, with your policies and procedures, you would
 5 not expect your staff to take that issue to the
 6 media. Is that a fair statement?

7 A. That's a fair statement.

8 Q. Okay. And you would expect, under your policies
 9 and procedures and practice, that they would only
 10 respond to the media if the media initiated the
 11 inquiry?

12 A. Yes.

13 Q. And Mr. Dorsey during that time period was your
 14 public relations person. Is that correct?

15 A. Correct.

16 Q. And he was on the scene with you at Mr. Smith's
 17 property --

18 A. Yes.

19 Q. -- at 11 Newport Street that evening?

20 A. Right.

21 Q. Do you have a recollection as to why you had him be
 22 there?

23 A. Probably because I didn't want to have to answer
 24 all his questions. If he wanted to know what was

1 (A short break was taken.)

2 MR. STOPA: Go back on the record to
 3 say I have nothing further to ask.

4 MR. CHERNETSKY: I think I just have
 5 a very brief one or two. Can I just see Exhibit 1.

6 EXAMINATION BY MR. CHERNETSKY:

7 Q. Commissioner, I'm going to ask you to look again at
 8 Exhibit No. 1 if you would.

9 A. (Witness complying.)

10 Q. And I believe that earlier Mr. Stopa directed your
 11 attention to the signature on page two. Do you
 12 recall that?

13 A. I do.

14 Q. Do you have any specific memory of that particular
 15 signature on this particular document?

16 A. No. But this is a form letter and it....

17 Q. This is a document that your office uses routinely
 18 in the course of business?

19 A. Routinely in the course of business. And I think
 20 the issue is whether I directed somebody to sign it
 21 or not. I very well could have. These things, if
 22 they pile up or something, I'll just instruct the
 23 staff to do what they do with them generally.

24 Q. But you don't recall that particular document?

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1 going on, I probably told him to go out there and
 2 find out himself because I was leaving.

3 Q. Answer whose questions?

4 A. The news people's questions.

5 Q. How is it that the news people were at 11 Newport
 6 Street that day?

7 A. They weren't.

8 Q. So you were anticipating that they might be?

9 A. No. I think Dorsey had questions as to what was
 10 going on because he had calls from the media. And
 11 I told him to go out there and find out for
 12 himself, basically. That's best as I can recall.

13 Q. Well, do you have a recollection as to how the
 14 media found out about this home at 11 Newport
 15 Street?

16 A. No, no.

17 Q. But your testimony is that neither you nor, to the
 18 best of your knowledge, anyone on your staff
 19 initiated contact with the media concerning 11
 20 Newport Street?

21 A. That's my -- yeah.

22 MR. STOPA: Just give me two minutes
 23 and we might be done.

24 MR. CHERNETSKY: Sure.

1 A. No, I don't recall this particular document, no.

2 Q. And what are the sorts of circumstances under which
 3 somebody other than Miss Fothergill might sign that
 4 document for her?

5 A. If she wasn't there to sign it, if, you know,
 6 things were piling up in her box, they want to move
 7 the paper through. These are standard, what do you
 8 call it, general business type things. They like
 9 to keep the process moving.

10 Q. Is there anything unusual about a staff member
 11 signing for one of your directors?

12 A. No, no.

13 MR. CHERNETSKY: That's all I have.
 14 Nothing further.

15 MR. STOPA: Actually, on that.

16 MR. CHERNETSKY: Sure.

17 EXAMINATION BY MR. STOPA:

18 Q. Next to Miss Fothergill's name is that -- the
 19 initials and a circle. Might that be LT for Lisa
 20 Timberlake?

21 A. It could be. Looks more like a P to me than a T,
 22 but it could be.

23 Q. Well, do you have anybody in your staff with the
 24 last name beginning with P such that --

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1 A. We have --

2 Q. Let me finish. Such that it would be somebody in

3 your office that would sign this?

4 A. Yeah, filling in or something on a given day.

5 Sure.

6 Q. Okay.

7 A. Yeah. Lisa, there's a Lisa Palmer. She's an MM4

8 or something who could conceivably fill in on a

9 given day.

10 Q. When you say you have staff, if you're missing

11 staff you have other people that will come in and

12 fill in at your office?

13 A. Yeah.

14 Q. And, I'm sorry, this Lisa Palmer is -- where does

15 she normally work?

16 A. Switchboard.

17 Q. And how often would she come to work as -- on your

18 administrative staff as a fill-in?

19 A. Occasionally.

20 MR. STOPA: Okay. I don't have

21 anything else. Thanks.

22 MR. CHERNETSKY: Okay.

23 (Whereupon, the deposition was

24 adjourned at 1:05 p.m.)

1 CERTIFICATE

2

3 COMMONWEALTH OF MASSACHUSETTS)

4 COUNTY OF SUFFOLK) ss.

5

6 I, Deborah S. Gutierrez, a Registered

7 Professional Reporter and Notary Public within and

8 for the Commonwealth of Massachusetts, do hereby

9 certify:

10 That KEVIN J. JOYCE, the witness whose

11 deposition is hereinbefore set forth, was duly

12 sworn by me, and that the foregoing transcript is a

13 true and accurate record of the testimony given by

14 such witness.

15 I further certify that I am not

16 related to any of the parties in this matter by

17 blood or marriage, and that I am in no way

18 interested in the outcome of this matter.

19

20

21

22

23

24

IN WITNESS WHEREOF, I have hereunto

set my hand and seal this 25th day of February,

2004.

Notary Public

My commission expires on

February 18, 2005

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1 CERTIFICATE

2

3

4 I, KEVIN J. JOYCE, do hereby certify that I

5 have read the foregoing transcript of my testimony,

6 and I further certify the said transcript is a true

7 and accurate record of said testimony.

8

9

10 Dated at this ____ day of _____, 2004.

11

12

13

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16

17 _____

18 KEVIN J. JOYCE

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